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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/827,037	03/25/97	TUTTLE J	92.206.3

26M2/1028

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EXAMINER	
SWANN III,G	
ART UNIT	**PAPER NUMBER**
2617	4

DATE MAILED: 10/28/97

Please find ~~below and/or~~ attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

GLEN SWANN
PRIMARY EXAMINER
GROUP 2600

PTO-90C (Rev. 2/95)
*U.S. GPO: 1997-422-198/60031

1- File Copy

Office Action Summary	Application No. 08/827,037	Applicant(s) Tuttle
	Examiner Glen R. Swann III	Group Art Unit 2617

☐ Responsive to communication(s) filed on _____ .

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *THREE* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *15-45* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *15-45* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____ .

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

2. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969), and *In re Goodman*, 11 F. 3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. As acknowledged (beginning in the last paragraph of page 5 of the amendment filed 04 AUG 1997), claims 15-24 were previously rejected under the non-obvious double patenting doctrine during the prosecution of Application 08/421,571. Those rejections are maintained, as noted below:

Claim 15 is rejected over claim 10 of Patent 5,406,263 as discussed in paragraph 2 of paper No. 5 of the aforesaid prosecution (copy enclosed).

Claim 16 is rejected over claims 2 & 10 of Patent 5,406,263 as discussed in paragraph 3 of paper No. 5 of the aforesaid prosecution (copy enclosed).

Claim 17 is rejected over claims 2, 4, & 10 of Patent 5,406,263 as discussed in paragraph 4 of paper No. 5 of the aforesaid prosecution (copy enclosed).

Claim 18 is rejected over claim 2, of Patent 5,406,263 as discussed in paragraph 5 of paper No. 5 of the aforesaid prosecution (copy enclosed) and over claim 2 of the aforesaid patent in view of DeSorbo over claim 2 of the aforesaid patent in view of Vasquez as discussed in paragraphs 2 & 3 of paper No. 8, respectively, of the aforesaid prosecution.

Claim 19 is rejected over claim 12 of Patent 5,406,263 as discussed in paragraph 6 of paper No. 5 of the aforesaid prosecution (copy enclosed).

Claim 20 is rejected over claims 12 of Patent 5,406,263 in view of Canceill as discussed in paragraph 9 of paper No. 5 of the aforesaid prosecution (copy enclosed).

Claim 21 is rejected over claims 10 & 12 of Patent 5,406,263 as discussed in paragraph 7 of paper No. 5 of the aforesaid prosecution (copy enclosed).

Claim 22 is rejected over claims 2 & 12 of Patent 5,406,263 as discussed in paragraph 8 of paper No. 5 of the aforesaid prosecution (copy enclosed).

Claim 23 is rejected over claims 2, 4, & 12 of Patent 5,406,263 as discussed in paragraph 8 of paper No. 5 of the aforesaid prosecution (copy enclosed).

Claim 24 is rejected over claims 2 & 12 of Patent 5,406,263 as discussed in paragraph 8 of paper No. 5 of the aforesaid prosecution (copy enclosed) and over claims 2 & 12 of the aforesaid patent in view of DeSorbo as discussed in paragraph 4 of paper No. 8 of the aforesaid prosecution and over claims 2 & 12 of the aforesaid patent in view of Vasquez as discussed in paragraph 5 of paper No. 8 of the aforesaid prosecution.

4. Claims 25 & 30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 15 of U.S. Patent No. 5,646,592. Although the conflicting claims are not identical, they are not patentably distinct from each other because although the preamble of the patent claim recites the device is for detecting rather than signaling whether the aperture is opened, the device of the patent does in fact signal, as seen column 10, line 4. Further, although the patent claim does not recite that the signal is radio frequency, such is inherent in the function of a **Radio-Frequency**-Identification Tag.

5. Claims 26, 31, 32, & 40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 7 of U.S. Patent No. 5,646,592. Although the conflicting claims are not identical, they are not patentably distinct from each other because although the preamble of the patent claim recites the device is for detecting rather than signaling whether the aperture is opened, the device of the patent does in fact signal, as seen column 7, line 42.

6. Claims 27, 30, 37, 38, 39, & 45 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5 ~~4~~,646,592. Although the conflicting claims are not identical, they are not patentably distinct from each other because although the preamble of the patent claim recites the device is for detecting rather than signaling whether the aperture is opened, the device of the patent does in fact signal, as seen column 5, line 67 through column 6, line 1.

7. Claim 28 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 & 8 of U.S. Patent No. 5 ~~4~~,646,592. Although the conflicting claims are not identical, they are not patentably distinct from each other because in view of claim 8 of the patent, it would have been obvious to one or ordinary skill in the art at the time of the invention to use the device of claim 1 of the patent with an apparatus such as is recited by claim 8 of the patent

and, as noted above, the preamble of the patent claim recites the device is for detecting rather than signaling whether the aperture is opened, the device of the patent does in fact signal.

8. Claim 29 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 8, & 13 of U.S. Patent No. ~~4~~5,646,592. Although the conflicting claims are not identical, they are not patentably distinct from each other because in view of claim 8 of the patent, it would have been obvious to one or ordinary skill in the art at the time of the invention to use the device of claim 1 of the patent with an apparatus such as is recited by claim 8 of the patent and to mount the RFID as recited in claim 13 of the patent and, as noted above, the preamble of the patent claim recites the device is for detecting rather than signaling whether the aperture is opened, the device of the patent does in fact signal.

9. Claims 33 & 35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 5,646,592. Although the conflicting claims are not identical, they are not patentably distinct from each other because although the preamble of the patent claim recites the device is for detecting rather than signaling whether the aperture is opened, the device of the patent does in fact signal, as noted above.

10. Claim 34 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8 & 12 of U.S. Patent No. 5,646,592. Although the conflicting claims are not identical, they are not patentably distinct from each other because although the preamble of the patent claim recites the device is for detecting rather than signaling whether the aperture is opened, the device of the patent does in fact signal, as seen noted above. Further, in view of claim 12, would have been obvious to one or ordinary skill in the art at the time of the invention to embed the RFID of claim 8 in a wall of the suitcase.

11. Claim 36 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7 & 14 of U.S. Patent No. 5,646,592. Although the conflicting claims are not identical, they are not patentably distinct from each other because although the preamble of the patent claim recites the device is for detecting rather than signaling whether the aperture is opened, the device of the patent does in fact signal, as seen noted above. Further, view of claim 14, would have been obvious to one or ordinary skill in the art at the time of the invention to use the device of claim 26 with a door.

12. Claims 41-43 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 4,646,592. Although the conflicting claims are not identical, they are not patentably distinct from each other because although the preamble of the patent claim recites the device is for detecting rather than signaling whether the aperture is opened, the device of the patent does in fact signal, as seen column 5, line 67 through column 6, line 1.

13. Claim 44 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 5 of U.S. Patent No. 4,646,592. Although the conflicting claims are not identical, they are not patentably distinct from each other because although the preamble of the patent claim recites the device is for detecting rather than signaling whether the aperture is opened, the device of the patent does in fact signal, as seen column 5, line 67 through column 6, line 1. Further , in view of claim 5, would have been obvious to one or ordinary skill in the art at the time of the invention to use the device of claim 41 to monitor a suitcase.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. They were cited during the prosecution of application S. N. 08/421,571.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glen Swann whose telephone number is (703) 305-4384. The examiner can normally be reached on Monday through Thursday from 7:30 AM to 5:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffery Hofsass, can be reached at (703) 305-4717.

An inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-8567.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 308-9051 (for formal communications intended for entry)

Or:
~~Of~~:

(703) 305-3988 (for informal communications -- please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

GLEN SWANN
PRIMARY EXAMINER
GROUP 2600

SWANN:grs
October 23, 1997